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FISCAL IMPACT REPORT

ORIGINAL DATE 2/23/15

SPONSOR HEENC LAST UPDATED _____ HB 330/HEENCs

SHORT TITLE Electric Coop Lines Through Tribal Land SB _____

ANALYST Clark

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	No Fiscal Impact	No Fiscal Impact		

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

The House Energy, Environment and Natural Resources Committee Substitute for House Bill 330 creates a new section of the Rural Electric Cooperative Act to require a cooperative to provide retail utility service on lands subject to the jurisdiction or control of a tribe pursuant to the same rates, rules, and forms that are applicable to the cooperative's other members. The bill defines "tribe" as "an Indian nation, tribe or pueblo located in whole or in part within the state."

FISCAL IMPLICATIONS

There is no fiscal impact.

SIGNIFICANT ISSUES

The Public Regulation Commission (PRC) reports the bill is a recapitulation of current practice amongst rural electric cooperatives and PRC regulations and rules. New Mexico's electric distribution cooperatives (coops) are nonprofit membership corporations organized pursuant to the Rural Electric Cooperative Act yet are also subject to the legal and regulatory scheme of the Public Utility Act because they fall under the definition of a "public utility." Therefore, the coops are required to serve the general public throughout their service areas in exchange for PRC

protection from competition by other public utilities. That obligation to serve currently extends throughout the state and does not exempt tribal or federal lands.

PRC notes a potential issue with the requirement to provide retail utility service on lands subject to the jurisdiction or control of a tribe pursuant to the same rates, rules, and forms that are applicable to the cooperative's other members. To the extent that the language of the bill limits or eliminates the tribal government's right to compensation for the use of its lands as rights-of-way for electric facilities, such effect may be pre-empted by federal law. See 25 U.S.C. § 325 of the Indian Right-of-Way Act, codified in part at 25 U.S.C. §§ 322-328; see also 25 C.F.R. Part 169.12.

PRC also notes concerns with the requirement for customers to pay "the same rates" because utilities do not charge the same rates to all customers. In some instances, municipalities and counties charge their residents a franchise fee; these fees are charged on the rural electric cooperative's bill to the customer and accordingly passed back to the municipality or county. In other instances, PRC approved tariffs are passed on to customers residing in various political subdivisions. For example, the additional cost to construct and maintain underground lines in a political subdivision or the right of way costs for a particular Native American government would result in rate differentials.

JC/je